

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

UNITED STATES OF AMERICA

PLAINTIFF/RESPONDENT

v.

Civil No. 06-5006
Criminal No. 99-50040-001

EZRA EARL MAGLOTHIN, JR.
a/k/a Scotty Maglothin

DEFENDANT/MOVANT

O R D E R

Now on this 8th day of February, 2006, comes on for consideration the **Magistrate Judge's Report and Recommendation** (document #38) herein and the **Objection to Magistrate Judge's Report** (document #39) which has been filed by movant, Ezra Earl Maglothin, Jr. The Court, being well and sufficiently advised, finds and orders as follows with respect thereto:

1. Ezra Earl Maglothin, Jr., the defendant/movant, filed herein his **Motion To Correct Sentence** (document 1) on January 13, 2006, in which he asks the Court:

" . . . to correct his sentence in accordance with the recent Supreme Court rulings in *United States v. Booker*, 543 U.S. 220 (2005) WL 50108, (U.S.), decided January 12, 2005; and, *Gonzalez v. Crosby*, 545 U.S. ___, 125 S.Ct. 2641 (2005), decided June 23, 2005.

Movant does not say in his motion how or why his sentence needs to be corrected by reason of decisions handed down several years after his conviction.

2. In her Report and Recommendation, the Magistrate Judge noted that movant's conviction, following a plea of guilty, was

affirmed by the Eighth Circuit Court of appeals in United States v. Maglothin, 2 Fed.Appx. 737 (8th Cir. 2001). Then, citing Never Misses a Shot v. United States, 413 F.3d 782 (8th Cir. 2005), she correctly concluded that Booker is not retroactively applicable to decisions which became final prior to it being decided on January 12, 2005 -- and recommended that movant's motion be denied.

3. In his objection to the Report and Recommendation, movant acknowledges that the Eighth Circuit Court of Appeals has held that Booker is not retroactively applicable -- and simply states that he "respectfully disagrees". Respectful disagreement with controlling precedent is not a sufficient basis to sustain an objection to a recommendation made in accordance with that precedent. The Court likewise finds no merit in movant's other assertions in his objection. Accordingly, movant's objection is overruled.

4. The Court concludes that the said Report and Recommendation is sound as to both fact and law and that it should be approved and adopted *in toto*.

IT IS, THEREFORE, ORDERED that movant's objections to the Report and Recommendation be, and they hereby are, **overruled**.

IT IS FURTHER ORDERED that the **Magistrate Judge's Report and Recommendation** be, and it hereby is, **adopted in toto**.

IT IS FURTHER ORDERED that, for the reasons stated herein, movant's motion under 28 U.S.C. § 2255 to vacate, set aside, or correct sentence, is hereby **denied**.

/s/Jimm Larry Hendren
HON. JIMM LARRY HENDREN
UNITED STATES DISTRICT JUDGE